

Durham Research Online

Deposited in DRO:

01 June 2012

Version of attached file:

Accepted Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

Pattinson, Shaun D. and Beyleveld, Deryck (2010) 'Defending moral precaution as a solution to the problem of other minds : a reply to Holm and Coggon.', *Ratio Juris.*, 23 (2). pp. 258-273.

Further information on publisher's website:

<http://dx.doi.org/10.1111/j.1467-9337.2010.00453.x>

Publisher's copyright statement:

The definitive version is available at wileyonlinelibrary.com

Additional information:

Use policy

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a [link](#) is made to the metadata record in DRO
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the [full DRO policy](#) for further details.

Defending Moral Precaution as a Solution to the Problem of Other Minds: A Reply to Holm and Coggon

Deryck Beyleveld and Shaun D Pattinson

Introduction

In a paper published in this journal, Søren Holm and John Coggon (2009) address a thesis that we originally advanced together (Beyleveld and Pattinson 2000) and have subsequently developed individually and with others (e.g. Beyleveld and Brownsword 2001, 2007; Pattinson 2002, 2006, 2009). This thesis is that precautionary reasoning, operating on the premise that there is a categorically binding moral principle that grants rights to agents—which we believe Alan Gewirth’s Principle of Generic Consistency (PGC) to be (Gewirth 1978; Beyleveld 1991)—entails that apparent (or “ostensible”) non-agents are owed moral respect in proportion to the degree to which they approach being apparent agents. However, according to Holm and Coggon, “[a]lthough there is no inherent intellectual flaw in the idea of precautionary reasoning, apart from a possible tendency towards conservatism”, this application of it fails “to provide a useful tool for guiding action” because

- (1) it pays insufficient attention to the conditions under which precautionary reasoning is appropriate and
- (2) “in practice the rights of a possible (or ‘non-ostensible’) agent must yield to the rights of an apparently definite (or ‘ostensible’) agent” (Holm and Coggon 2009, 296).

In addition, Holm and Coggon detect a bias towards humans in our work that they suggest explains the deficiencies in our use of precaution.

In this paper we will respond to these claims and statements associated with them. However, it is important at the outset to appreciate that we consider their critique to be fundamentally misguided because the thesis they attack is not one that we have ever presented. They allege that the argument we advance dictates, variously, that:

as we do not “know” for certain that something is not a moral agent, we do well to presume that it is.

[a]s it is impossible for anyone to prove or disprove [that apparent non-agents are not agents] we should apply a version of the precautionary principle, and treat them as if they are agents.

[there is a] practical and binding imperative [to] treat everything that might logically be an agent as an agent.

if it is logically possible that an entity is an agent, it is morally proper to treat it as an agent.

[precautionary reasoning] requires us to treat anything as if it were an agent so long as it is logically possible that it might be an agent. (Holm and Coggon 2009, 296, 298, 301, 303, and 305, respectively)

However, to distinguish clearly what we do argue for from this attribution it is necessary to present the argument itself in its proper context.

The Precautionary Arguments and Their Aims and Consequences

Gewirth's argument for the PGC (if sound, as we contend it is) establishes that all agents (beings with the capacity to pursue purposes voluntarily that they treat as reasons for their actions) must grant "generic" rights (rights to conditions that are necessary for action/successful action regardless of the purposes involved) to all agents on pain of contradicting that they themselves are agents (Beyleveld 1991). This renders the PGC categorically binding on vulnerable¹ agents in relation to those of their actions that affect other vulnerable agents. It is possible, however, to imagine a sceptical agent "A" accepting this yet denying that the PGC has any practical application on the grounds that A is the only agent in the world. While many beings are presented to A's experience that behave as though they are agents, according to A, for all A knows they might be figments of A's imagination, and, even if they exist independently of A, they might be mindless automata and not agents at all. Supposing that they exist independently of A, to be agents they must have certain mental capacities (e.g., be able to experience pain and suffering; be self-conscious; be able to reason reflectively to some degree, etc.). But only A can know for certain that A has these capacities. Hence, claims A, while the PGC is categorically binding in theory, unless A can be shown to contradict that A is an agent by denying that those who behave as though they are agents actually are agents, the PGC has no categorically binding relevance in practice.

Precautionary reasoning entered our thinking, initially, merely as the basis of an adequate response to such a radical sceptic. The response begins by accepting and elaborating on the basis of A's scepticism. Confronted with B (*who behaves/displays the capacity to behave as though B is an agent, and is hence an apparent or ostensible agent*),² there is, indeed, no way that A can know that B is an agent or that B is not an agent without making wholly untestable metaphysical assumptions. It is not merely that A has no way of knowing with certainty whether or not B is an agent. Behavioural capacities, and the physical/biological structures generally associated with them only provide *any* evidence of agency on specific metaphysical assumptions that are neither demonstrable as necessary truths (or necessary falsehoods) nor empirically testable in a non-circular way. However, the inferences A draws from this are unsound. If A supposes that B *is* an agent (and acts accordingly) and happens (unknowingly) to be wrong, then A does not violate the PGC. On the other hand, if A supposes that B *is not* an agent (and acts accordingly) and happens (again unknowingly) to be wrong, then A violates the PGC. Since the PGC is categorically binding on A, A must avoid violating the PGC at all costs whenever this is meaningful and possible. Since it is possible that B is an agent *and*

¹ That the PGC applies to vulnerable agents only is to be taken as read. Only beings capable of being harmed (which, in the framework of the PGC specifically means being capable of being deprived of the generic conditions of agency) are intelligible objects of moral concern, and only those capable of not complying with moral precepts are intelligible addressees of such precepts. See Beyleveld and Brownsword 2001, 114-117 for further explanation.

² We will use the terms "apparent" and "ostensible" interchangeably in this paper.

B behaves like an agent it is both meaningful and possible for A to treat B as an agent, in consequence of which A must treat B as an agent, on pain of being willing to violate the PGC, which A categorically may not entertain. A errs in thinking that in order to show that the PGC has practical application with categorically binding force it is necessary to demonstrate that A contradicts that A is an agent by denying that those who behave like agents actually are agents. In fact, it is only necessary to show that A fails to treat the PGC as categorically binding on agents (and, thereby contradicts that A is an agent) by failing to treat those who behave like as agents as agents; and this the precautionary argument establishes. Quite simply, this argument establishes that any agent must treat other (epistemically) possible agents *who are able to behave as though they are agents* (viz., ostensible agents) as agents whether or not they (unknowably for the agent) actually are agents, which means that they must be granted the generic rights by all agents. Furthermore, it entails that those behavioural capacities and associated physical/biological structures that provide evidence for ostensible agency must be taken *morally* (for precautionary reasons) as evidence (but not necessarily complete evidence) of agency in other beings by agents.³

The precautionary argument that we apply to apparent non-agents is developed from this basic precautionary argument and must be understood as such. This argument begins by asking us to suppose that A is confronted, not with an ostensible agent B, but with C (who *does not* behave/display the capacity to behave as though C is an agent, and hence is not an ostensible agent). Now, for the very reasons that A cannot know whether or not B is an agent, the fact that C does not appear to be an agent does not entail that C is not an agent. There are all sorts of reasons why C might be an agent yet not be able to display the behaviour to be expected of an agent. In short, just as B's ostensible agency does not (indeed, cannot) establish A's actual agency, so C's apparent non-agency does not (and cannot) establish C's non-agency. Hence, as in the case of B, whether A supposes that C is an agent or that C is not an agent, A can be mistaken and can never know what the true position is. So, just as with B, A can be wrong in supposing that C is not an agent when C happens to be an agent, or wrong in supposing that C is an agent when C happens not to be an agent. Does it, therefore, follow that because A is categorically required to comply with the PGC that A must treat C as an agent (and grant C the generic rights)? No! The primary argument, as we have already pointed out, does not require beings to be treated as agents on the mere possibility that they might be agents. It only requires only *those possible agents who are ostensible agents* to be treated as agents. This is quite simply because to treat a being as an agent is to grant it the generic rights and to impose the correlative generic duties on it. This, because both "ought" and "may" imply "can", can

³ This argument, which is, in effect, a moral argument for other minds, may surely be extended to provide a *moral* argument for rejecting radical scepticism about the existence of a "real" world independent of "my" senses. It is a necessary condition of there being other agents who can be harmed by my actions that any beings presented to my experience are not mere figments of my imagination but have a real physical existence. I can't prove that this is so by experience as I must suppose that there is a "real" world for my experiences to evidence this. However, I also can't disprove it. However, for me to suppose that there is no such world is for me to suppose that I need not obey the PGC. But if I follow this and there is a "real" world, I violate the PGC. On the other hand, if I suppose that there is a real world but there isn't then I do not violate the PGC. Hence, I must suppose that there is a "real" world. If this is sound it supports Kant's claim (1788, 126-130) that practical reason has primacy over theoretical reason (though not for quite the same reasons or in quite the same way).

only meaningfully be done with those who behave as agents or display the capacity to do so, which C does not. What we have contended is that precaution imposes duties on A to C (hence a moral status—but not rights—to C, as an object of a degree of moral concern to A) in proportion to (variously) the probability that C might be an agent under precaution; how easy it is to imagine that C is an agent; or how close C's observable characteristics approach those of an ostensible agent. These different indicators are not, strictly, alternatives. Rather, the idea that we have presented is that probability under precaution might be measured by how easy it is to imagine that C might be an agent, and that C's observable characteristics bear on this. Granted, these are vague and rather analogical ideas. But while the usefulness of precaution to actually assign a specific moral status rests on our ability to be precise about this, the cogency of the general idea does not. This is important because we have never claimed to have developed a precise tool that enables conflicts between the rights of ostensible agents and the interests of non-ostensible agents to be accurately and objectively assessed in all situations, though we have identified some of the problems confronting such an assessment and discussed strategies for dealing with them, which will outline later (bearing in mind that Holm and Coggon make little reference to this).

The Details of Holm and Coggon's Claims Examined

Insufficient attention is paid to when precautionary reasoning is appropriate

Holm and Coggon make several claims that contribute to this contention.

I. It is not enough that there must be a logical possibility of agency. There must be “real uncertainty” about whether or not a being is or is not an agent before we need to take the possibility of agency seriously (Holm and Coggon 2009, 298). Indeed, if entities are very different from ostensible agents then it becomes almost meaningless to suggest that we should treat them as agents.

Even the best effort at a bona fide judgment will leave us struggling to know what serves the interests of an embryo or a computer or a brick. When we are working within viewpoints of radical, or even fairly radical, limits of what we can know, the idea of even attempting to do what is morally right loses its meaning. (Holm and Coggon 2009, 305)

First and foremost, this rests on falsely attributing to us the idea that the mere logical possibility that something is an agent requires us to treat it to at least some degree as though it were an agent. As we have already explained, precaution requires agents to treat other beings as agents only if and to the extent that it is possible/meaningful to do so. Strictly speaking it is only possible to treat ostensible agents as agents. In the case of beings that are not ostensible agents but have some characteristics that generate the generic interests that ostensible agents have it is possible and meaningful to respect those interests (though not as rights). Only in this non-literal sense is it possible to treat them (to a degree) as agents.

As far as even this non-literal sense is concerned, we agree entirely that it is farcical for us to contemplate acting in the interests of a brick, and it is for just this reason that

precaution assigns no moral standing to bricks (as implied by the explicit example of tables cited in Pattinson 2002, 73). As far as computers are concerned, well it depends on just what the computers are able to do. Computers that start behaving like KIT in the 80's TV series *Knight Rider* have serious claims to be considered ostensible agents. As for embryos, well as living beings and potential ostensible agents it is perfectly meaningful to think of an embryo's life as an interest it has under precaution. We have a very good idea about what ending the life of an embryo as a hypothetical generic condition of action involves, because life is the same thing here whether or not the embryo is an agent. On the other hand we have no idea about what ending the life of a brick might be.

Secondly, it is worth pointing out that use of the notion of "real uncertainty" that Holm and Coggon appeal to is question-begging in the context of the metaphysical scepticism that the argument is addressing. Holm and Coggon provide no examples of "real uncertainty" about agency as against mere logical possibility of agency, but do suggest that our method makes it

difficult to sustain the divide between human ostensible agents (i.e., you and us) and other entities displaying very similar agency characteristics except human communication. In a context of profound epistemic uncertainty it must surely be the way of precaution to class many animals as ostensible agents and not just as possible agents. (Holm and Coggon 2009, 303)

This leads us to the conjecture that perhaps they would say that there is "real uncertainty" about the agency of chimpanzees or dolphins, but only a logical possibility of agency in the case of rocks. But, if this is fair, why is there "real uncertainty" about chimpanzees? On the premises of radical scepticism no agent can *know* that there are other agents. The ability to display agency behaviour does not bear on an agent's *knowledge* of the agency of another being, and this is the case whether or not an agent is dealing with another human being, a chimpanzee, a dog, a plant, a computer, or a rock. As a matter of *knowledge*, the agency of all of these is equally uncertain and equally logically possible. What variations in agency-like behaviour, etc, bear on is merely an agent's ability to treat another being as though it were an agent (in the sense we have just explained). Further, we distinguish between at least four *qualitatively* different levels of relevant behavioural display (within the second and third of which there can be *quantitative* differences):

1. Beings that clearly *behave like* agents (apparent/ostensible) agents (e.g., "normal" adult human beings; androids/robots of the sophistication displayed in the film *Blade Runner* or *I Robot*; hypothetical non-human animals or plants that behave like agents)
2. Beings that we are uncertain *behave like* agents (e.g., or so we personally judge, human children at early stages of communicative competence; dolphins; whales; non-human primates; some birds)
3. Beings that do not quite behave like agents but have some of the behavioural capacities that apparent agents display; i.e., that have necessary but not sufficient observable characteristics to be classified as *ostensible* agents (which, arguably, includes, whether adult or not, dogs, cats, pigs, horses, cattle, sheep, earthworms, plants, bacteria; computers with some self-regulating functions)

4. Beings that do not behave like agents and exhibit no behavioural capacities of ostensible agents (e.g., rocks) (Beyleveld and Pattinson 2000, Beyleveld and Brownsword 2001, esp. 124, and Pattinson 2002, esp. 73).

To these we need to add at least three other categories: living beings who have displayed the behavioural capacities of agents (e.g., persons in a persistent vegetative state); those with the potential to display these capacities (e.g., human embryos; human babies and very young children); and deceased previously ostensible agents (whose bodies fall under 4; but who as speculative continuing spirits might still exist as ostensible agents). These we place outside of the hierarchy simply because it is unclear just where we would place them as general classes.⁴

At level 1 we can treat the beings as agents in all respects. Specifically we can grant them all the rights of the PGC and impose all its duties on them. At levels 2 and 3 we can identify interest-protecting actions that refer to interests beings would have rights to if they are agents. At level 2 it is unclear if we can impose the PGC's duties on them fairly and unclear whether they are capable of releasing others who can respect their interests from duties to protect these interests (so unclear whether we can grant them the generic rights under the will-conception of rights that the PGC deals in). At level 3, it is clear that we cannot grant them the generic rights or impose the generic duties on them. At level 4 we cannot, as Holm and Coggon state, even meaningfully get a handle on what actions would affect/protect their relevant interests (putative rights).

II. Because the precautionary thesis requires us to treat embryos as agents because they tend to become ostensible agents, it renders our view akin to John Finnis' (Finnis 1995, 30–35) according to which all humans share a radical (potential) capacity for choice and so are to be granted full moral status even if they individually are unable to display those characteristics, such as a capacity for choice, that grant this status (Holm and Coggon 2009, 302)

Finnis' view is undoubtedly fallacious within our framework at least, simply because there being a potential agent can only grant potential rights not rights themselves. But nowhere do we claim that, e.g., human embryos, have any generic rights, let alone generic rights equivalent to those of a normal adult human being, on the grounds that they are potential agents, and there is nothing in our precautionary thesis that requires us to do so. What we do claim is that human embryos have a minimal moral status (meaning that agents have minimal moral duties to them) on the grounds that they have the potential to become *ostensible* agents. Why so? Because precaution driven by a categorical imperative requires us to treat ostensible agents as agents (*to regard* sufficient evidence for ostensible agency *as sufficient evidence* of agency *for practical purposes*).⁵ Consequently it requires us to regard those items that are jointly sufficient evidence of ostensible agency (hence agency), but individually not sufficient evidence, as *some* (*albeit insufficient*) evidence of ostensible agency (hence agency). At the same time, insufficient evidence does not preclude the possibility that the being in question is an

⁴ Further categories can be created by reference to qualifications of this sort to applicable categories other than level 1.

⁵ We will not repeat the qualification "for practical purposes". It should be taken as read in the precautionary framework.

agent. In other words, insufficient evidence for ostensible agency (hence agency) is not sufficient evidence of non-agency, even though it is sufficient evidence of ostensible non-agency. The crucial claim now is that, *in this context*, agents must think of potential ostensible agency as providing some (though clearly insufficient) evidence, not for ostensible agency, but for agency. Why? Beyleveld (2000, 73–75) suggested, and this is referred to by Holm and Coggon (2009, 302–303), that this is because *all things being equal*, it is more likely that a being with the species potential to develop ostensible agency actually is an agent than is one without this species potential. This is because potential ostensible agency either reduces the number of speculative (but coherent) hypotheses that need to be advanced in order to account for a hypothetical presumption that the being actually is an agent but is not able to display ostensible agency, or else makes more plausible speculative hypotheses that would provide such an account. For example, the idea that a human embryo actually is an agent could be true on the basis of the metaphysical doctrine of metempsychosis coupled with the idea of locked-in agency. Such a scenario is surely more “plausible” if we are dealing with beings that have the species-capacity to develop ostensible agency than when we are dealing with beings that do not. At the same time, this hypothesis is so speculative that only extremely minimal status can be assigned on its basis alone.

III. Characteristics short of agency-qualifying do not render it more likely that an entity actually is an agent. Agency is an intrinsic property not one that can be assigned. We wrongly suppose that epistemic uncertainty bears on agency itself.

Agency is all or nothing. . . . [I]t is not something that an entity is given by a Gewirthian; it is intrinsic. And the chances of an entity being an agent are not affected by the assessment of ostensible characteristics and their relationship to commensurate levels of protection. (Holm and Coggon 2009, 304)⁶

If Holm and Coggon are referring to the case of ostensible agents then the problem is that we do not hold that the bearing of the assessment of ostensible characteristics is on whether or not an entity is an agent *as such* or even on knowledge of this. The bearing is on whether it is *rationally required* (within the framework of the PGC) to treat the entity as an agent (whatever it might actually be). In this context, “agency” is assignable to ostensible agents *for practical purposes* (i.e., for practical purposes, ostensible agents are *to be thought of as* agents), because while it is not within the power of precaution to either make something an agent or even to provide us with knowledge that it is an agent, it is open to us to treat or mistreat what is or is not an agent in a morally relevant way, and the epistemic and moral considerations that interplay in the precautionary argument have a direct bearing on the rationality of our actions here.

But, surely, it might be said, there is an objection here to the idea we have just advanced under II that observable characteristics like potential ostensible agency provide some evidence for agency (which is to say make it more likely/probable that a non-ostensible agent *is* an agent). However, the important thing to appreciate here is that the

⁶ In this passage they say that reference to “partial” agency is a red herring. But we only refer to partial agents as *non-agents* and our reasoning works exclusively on ostensible agency and non-ostensible agency and necessary/sufficient conditions to assign ostensible agency, never on partial agency.

bearing of observable characteristics is *not* on the *objective* probability of a non-ostensible agent being an agent. Probability under precaution, even when it refers to the idea of actual agency (which is a standing possibility), is a construct driven by the imperative to do what can be done to respect the PGC (i.e., to guard against the possibility of violating the PGC in a proportionate manner). The very idea of protecting against the possibility of violating the PGC in relation to non-ostensible as well as ostensible agents rests on the idea that they might possibly be agents. In other words, the application of precautionary reasoning is regulated by the idea of possible agency which means the idea of *a chance of actual agency*. The PGC seeks to protect the generic conditions/capacities of agency of agents, and possession of the generic capacities (though not of the generic rights) is a matter of degree. Precaution does require agents to respect the correlative generic interests of non-ostensible agents as well as ostensible agents on the ground that there is *a chance* that they are agents. Since the range of meaningful actions to protect generic interests is correlative to the display of generic capacities and associated characteristics, protection that can be given is proportionate to the degree to which these capacities and characteristics are displayed. At root, precautionary probability of agency is proportionate to the range and nature of the generic interests that can plausibly/intelligibly be protected. In the context of precaution, it is neither unnatural nor improper to think of an ostensible agent as having a ‘chance’ of being an agent of 1, while a rock might be thought of as having a ‘chance’ of 0,⁷ and of other non-ostensible agents as having a ‘chance’ of being agents $>0 < 1$, even if we cannot assign any other cardinal values. And, once we do this, then it follows (schematically) that the precautionary probability of being an agent tracks the ostensible generic capacities we are able to identify. *Ceteris paribus*, it is easier to imagine that a potential ostensible agent actually is an agent than a non-ostensible agent lacking this potential (see the example under II above). This, we suggest, is because it facilitates (however slightly) our ability to form a picture in which the idea of, e.g., a human embryo, having generic agency interests is rendered intelligible. And this (schematically) affects the precautionary probability of a non-ostensible agent being an agent.

Our position means that the interests of a possible agent must always yield to the rights of an ostensible agent, which makes it practically useless

Holm and Coggon suggest that even if there is a workable and coherent way of granting proportional status to non-ostensible agents, in practice, where there is a conflict, the rights of ostensible agents will always override the interests of non-ostensible agents, thus making the precautionary thesis

Nothing more than a redundant token gesture to admit that the less probable agents may nevertheless have been worthy of protection. (Holm and Coggon 2009, 305)

To back this up, they refer to a discussion in Beyleveld and Brownsword 2001 of the case of a patient in PVS, where it was stated that there are three possible grounds to attempt to

⁷ The critical remarks about mathematical probability that Holm and Coggon make (2009, 304–305) ignore this limitation.

justify withdrawal, despite precautionary protection (as an ex-ostensible agent): to fulfil an obligation to the patient when he or she was an ostensible agent (e.g., under a living will); or as a permissible fulfilment of a preference that the ostensible agent was known to have; or as a reallocation of resources to protect the generic interests (rights) of other living ostensible agents.

They (not Beyleveld and Brownsword, who presented these as considerations to be weighed without making a judgment about the weighting) contend that

All things being equal, it seems unlikely that a sound assessment of resource allocation is going to “favour” the individual in the persistent vegetative state over the ostensible agent whose dialysis can not be funded, or who can’t find an NHS dentist to register with. (Holm and Coggon 2009, 306)

Perhaps (and they make similar remarks about an example they provide about treatment of baby Charlotte Wyatt and also comments made by Beyleveld and Brownsword, 2007 about use of organs from the dead: Holm and Coggon 2009, 306–307); but even if precautionary reasoning would yield the conclusion they suggest in these cases (and this is by no means straightforward), this is no basis for stating that precautionary reasoning would entail that the rights of ostensible agents will always trump the interests of non-ostensible agents. Such judgments must necessarily be made on a case-by-case basis and Holm and Coggon do not pay attention to the analysis of the problems of weighting that we have presented in numerous places.

This is not the place to rehearse our analysis of these problems in detail. Suffice it to say that we have argued that precautionary reasoning does not provide us with any straightforward answers to conflicts between the rights of ostensible agents and the interests of non-ostensible agents except where there is a *one-variable conflict*. By a one-variable conflict we mean (here) a conflict is between the same interest of an ostensible agent and a non-ostensible agent. In such a conflict, the issue is settled in favour of the ostensible agent simply because the ostensible agent has a higher moral status under precaution. However, once the interests are different (compare the interests endangered by the removal of life-sustaining nutrition and hydration with those endangered by the denial of NHS funded dental care) what needs to be weighed is the product of the ostensible agent’s interest and status against the product of the non-ostensible agent’s interest and status. If this is to be done in any precise manner cardinal values must be assigned to both the degree of moral status of an entity and the value of a generic interest. Now, while Gewirth’s criterion of degree of needfulness for action provides a handle on assessing what generic interests are more important than others, it does not assign cardinal values to the ordering. Furthermore, except in the case of an ostensible agent (with full moral status correlated with a precautionary probability of agency of 1) and non-ostensible agents like rocks (with no moral status, hence a precautionary probability of agency of 0), while it seems clear (whatever measure of precautionary probability we use) that the precautionary moral status of a chimpanzee is higher than that of a human embryo, it does not enable us to state in mathematical terms just how much higher. To this must be added the fact that it is far from clear that scales of moral status (precautionary probability) and scales of interest value can be rendered commensurable

in a non-arbitrary way.⁸ If they cannot be rendered commensurable then we have argued that practical solutions must be left to the “indirect application” of the PGC, which is to say that it must be left to the good faith, transparent, and accountable judgment of persons authorised under the PGC to make such judgments (e.g., Beyleveld and Brownsword 2001, 255-258).

This by no means entails that we must “paralyse ourselves with matters such as deciding whether killing bacteria will breach their logically possible generic rights” (Holm and Coggon 2009, 308). Above we indicated that there can be *quantitative* differences in the behavioural display of beings that do not quite behave like agents but have some of the behavioural capacities that ostensible agents display (level 3 above). These quantitative differences are to be interpreted by reference to the tenets of the PGC, as applied via precautionary reasoning. Bacteria display the patterned organismic behaviour common to all living creatures, but it seems to that they do not display (and this is a scientific claim) behaviour that evidences (a) being motivated by feeling or desire, (b) intelligent and thereby susceptible to learning by experience, or (c) value-guided, and characteristic of an agent (Beyleveld and Brownsword 2001, 124; Pattinson 2002, 26 and 73). Thus, bacteria represent possible agents displaying behaviour that only minimally approaches that of ostensible agents, albeit (in this sense agent-related) behaviour that goes beyond that displayed by rocks. Further, as Holm and Coggon recognise, for ostensible agents to attempt to protect the generic interests that bacteria have in continued life (should they actually be agents) would typically prevent ostensible agents from exercising *any* of their own generic rights. As one of us has noted elsewhere, we unavoidably kill living cells when we scratch, bacteria when we wash, and insects when we travel (Pattinson 2002, 73). Nonetheless, a person making a good faith attempt to apply the PGC should conclude that even the most basic (presumed) generic interests of entities displaying only patterned organismic behaviour can be treated as if they are overridden by *any generic interest* of an ostensible agent.⁹ The application of the PGC through precautionary reasoning cannot necessitate suicidal martyrdom. To conclude otherwise would be to ignore the justificatory structure of the PGC, in which agents are first shown to contradict that they are agents by not holding that that they themselves have the generic rights, as a necessary premise in the demonstration that agents contradict that they are agents if they do not grant the generic rights to all other agents (Beyleveld 1991, 56-61). In contrast, it is often possible to protect the generic interests of entities displaying greater behavioural capacities without thereby necessitating suicidal martyrdom.

Now, while we do not claim that precautionary reasoning is a cure-all for all hard cases where we have to weigh the interests of ostensible and non-ostensible agents, it should be very clear that the situation is much more complex and nuanced than Holm and Coggon depict.

⁸ We have not altogether precluded that there might be a way of rendering them commensurable: and there seems to be some prospect of this if precautionary probability is operationalised in terms of identifiable generic interests. However, there are complexities here and this is not the moment to create hostages to fortune by presenting a sketchy analysis that has not been fully thought through.

⁹ Such entities would still require protection against non-generic concerns—mere whims not connected with the maintenance or advancement of an ostensible agent’s generic features.

There is evidence in our writing of a bias towards humans that may explain our position

As Holm and Coggon fully appreciate, Gewirth's theory is strictly a theory about the rights of agents not a theory about the rights of human agents alone. This led to one of us employing "it" as the pronoun for agents (Beyleveld 1991, 15) and we have jointly and separately continued this practice in subsequent works. Agents need not be gendered beings. Nor need they even be biological entities as this is commonly understood. Agents are defined by generic capacities to act, and anything with these capacities has the generic rights. They also appreciate that when this is coupled with the precautionary theses we advance, the list of generic rights holders includes every vulnerable being with the capacity to act (to do something voluntarily for a purpose that it treats as the reason for its behaviour), and it is logically possible for anything that could be such an entity to be a generic rights-holder. Hence even rocks are logically possible-rights-holders.

Now, on the one hand, their critique is that this gives the thesis an impossibly broad scope (Holm and Coggon 2009, 303, 308). To this, we have consistently replied that it does so only on the premise that the thesis requires us to treat logically possible agents as agents, which is not our position or entailed by our precautionary arguments. But on the other hand they claim that we sometimes (though they sometimes seem to attribute this to the precautionary thesis itself, which is wholly untenable) display a species bias in our writing (Holm and Coggon 2009, 303). For this they provide the following evidence:

- (a) The "it" convention is not consistently adhered to, because on occasion Gewirthians (Beyleveld and Brownsword 2007) employ gendered pronouns (Holm and Coggon 2009, 299).
- (b) Gewirthians have claimed that there is that no more fundamental right than the right to life. But if robots are not to be ruled out (as the thesis requires) then we should refer to existence not to life (Holm and Coggon 2009, 299).
- (c) We deny many animals the status of ostensible agents (Holm and Coggon 2009, 303-304).

As regards departures from the "it" convention, it is entirely appropriate to do this in a context in which it is clear that we are not dealing with beings other than human beings, who are gendered, and this is the case in the examples they cite. Some men and women would, indeed, take it as an insult to be addressed directly as "It".

As regards the use of the term "life" rather than "existence", this is, in the first instance, an arbitrary terminological point. A robot that is a self-aware agent would probably have no difficulty thinking of actions that permanently terminate its functions as ending its life or killing it. To take an example from fiction: the robot in the film *Short Circuit* declares its self-awareness by the phrase "No. 5 is alive". So nothing whatever can be inferred from this. Secondly, any bias towards biological terms (were one to be present) is not a bias towards humans as they are not the only biological entities.

As regards the denial of ostensible agency to non-human animals, while it is true that we do not consider that dogs and cats, for example, are ostensible agents, this is not because they lack any specifically human characteristics (like human language). What it

is necessary is the display of the vulnerable capacity to do things voluntarily for purposes that are reasons for one's behaviour. We just happen to judge (and this is largely a scientific matter) that dogs and cats do not have this capacity. As we have said, we think that in relation to dolphins, chimpanzees, and a number of other animals, the evidence for ostensible agency is inconclusive.

Concluding Remarks

The charge of violating the “principle of augmentative consistency” (Holm and Coggon 2009, 301) would be properly made out against a position that had all the features attributed to our use of precautionary reasoning by Holm and Coggon. They are surely right to insist that a theory that required all possible agents to be treated as agents, literally rather than metaphorically, could not consistently claim to be action-guiding. They are surely also right that the consistent application of a theory that rests possession of moral status on properties that are not necessarily connected to membership of a particular species cannot favour humans over non-humans, where those non-humans display the relevant properties. However, Holm and Coggon's characterisation of our use of precautionary reasoning sets up a straw man and often departs from what we might label the principle of charitable interpretation, which requires that those we criticise be interpreted so as to render what they say as rational as possible.¹⁰

We have greatly benefitted from the opportunity to give this reply and thereby address any misunderstandings that have been created by the way we have chosen to express ourselves in print. We willingly acknowledge that the nature of our precautionary thesis is such that it is often very difficult to accurately express it without using convoluted language and neologisms. The problem of other minds, as advanced by the radical sceptic, is often linguistically sidelined by it being commonplace to express oneself as if the epistemic gap did not exist, probably because it is counterintuitive and few theorists consider it amenable to solution. Distinguishing the concept of an agent from that of a being displaying all the behaviour expected of an agent is difficult enough—perhaps “apparent agent” is a better term than “ostensible agent”. But as soon as one tries to describe other entities as possible agents and describe beings approaching ostensible or apparent agency, the required language departs even further from common, and even established philosophical, parlance. It is therefore all too easy to lapse into language that is more metaphorical and elegant than strictly accurate.

Even allowing that some of our phrasing and terminology might not have best communicated our position, however, it is good academic practice for critics to attempt to interpret a theory in accordance with its own tenets and only accept an interpretation leading to inconsistency when no other is plausible. Our reliance on the principle that “ought” and “may” implies “can” (e.g. Beyleveld and Pattinson 2000, 48) surely points

¹⁰ Holm and Coggon (2009, footnote 5) violate this principle very clearly when they accuse Beyleveld and Brownsword (2001, 253) of a *non-sequitur* that depends on interpreting “allows for X to be held” not as meaning “not excluding the possibility of holding X” but as meaning “requiring X to be held”. While they claim that this is the natural reading, this is so much not the case in ordinary English, and it would have been so easy to have said “requires” if that is what was meant, that the only reason they can have for attributing their reading is that it enables them advance a criticism that they would be otherwise unable to make.

against interpreting us as holding that we are morally required to treat every possible agent as an agent even when this is meaningless or inconsistent with an agent exercising its own generic rights. Similarly, our repeated and explicit use of what Holm and Coggon recognise as a *ceteris paribus* rider should make critics wary of generalising from particular applications of precautionary reasoning to reach conclusions where further variables apply.

References

- Beyleveld, Deryck. 1991. *The Dialectical Necessity of Morality*. Chicago: University of Chicago Press.
- Beyleveld, Deryck. 2000. The Moral Status of the Human Embryo and Foetus. In *The Ethics of Genetics in Human Procreation*. Ed. H. Haker and D. Beyleveld. Aldershot: Ashgate.
- Beyleveld, Deryck and Roger Brownsword. 1986. *Law as a Moral Judgment*. London: Sweet and Maxwell.
- Beyleveld, Deryck and Roger Brownsword. 2001. *Human Dignity in Bioethics and Biolaw*. Oxford: Oxford University Press.
- Beyleveld, Deryck and Roger Brownsword. 2007. *Consent in the Law*. Portland: Hart.
- Beyleveld, Deryck and Pattinson, Shaun D. 2000. Precautionary Reasoning as a Link to Moral Action. In *Medical Ethics*. Ed. M. Boylan. Upper Saddle River, New Jersey: Prentice Hall.
- Finnis, John. 1995. A Philosophical Case Against Euthanasia. In *Euthanasia Examined*. Ed. J. Keown. Cambridge: Cambridge University Press.
- Gewirth, Alan. 1978. *Reason and Morality*. Chicago, Ill.: Chicago University Press.
- Holm, Søren and Coggon, John. 2009 A Cautionary Note against “Precautionary Reasoning” in Action Guiding Morality. *Ratio Juris* 22: 295–309.
- Kant, Immanuel. 1788. *Critique of Practical Reason*. Translated by Lewis White Beck. 1993. 3rd ed. Upper Saddle River, New Jersey: Prentice-Hall.
- Pattinson, Shaun D. 2002. *Influencing Traits Before Birth*. Aldershot: Ashgate.
- Pattinson, Shaun D. 2006. *Medical Law and Ethics*. 1st ed. London: Sweet and Maxwell.
- Pattinson, Shaun D. 2009. *Medical Law and Ethics*. 2nd ed. London: Sweet and Maxwell.